IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.MC.No. 7605 of 2002()

CRRP.22/1999 of SESSIONS COURT, MANJERI
MC.9/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NILAMBUR
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PETITIONER: REVISION PETITIONER/COUNTER PETITIONER

ILLIKKAL ABOOBACKER, S/O.ALAVI HAJI,
NAROKKAVU, VAZHIKADAVU NILAMBUR TALUK,
(VAZHIKADAVU POLICE STATION).

BY ADV. SRI.K.P.MUJEEB

RESPONDENTS: RESPONDENT/PETITIONER

YACHERI KHADEEJA, D/O.MUHAMMED,
NAROKKAVU VAZHIKKADAVU, NILAMBUR TALUK,
(VAZHIKKADAVU POLICE STATION).

BY ADV. SRI.M.P.PRABHANANDAN
SRI.SOJAN MICHEAL
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.MC. 7605/2002

ORDER ON CRL.MP. NO.5888/2002 IN CRL.NC. 7605/2002

DISMISSED

12.11.2007 **SD/- K.R.UDAYABHANU , JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

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CRL.M.C.NO. 7605 OF 2002

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DATED THIS THE 12th November 2007

ORDER

The petitioner in the Crl.M.C.is the respondent in M.C.No.9/1996 in the file of the Judicial First Class Magistrate Court, Nilambur, the proceedings initiated under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act and is under orders to pay a sum of Rs.3,000/- as maintenance towards maintenance during iddat period and Rs.60,000/- as reasonable and fair provision. It is the contention of the petitioner herein that the consent of the marriage was obtained by fraud and misrepresentation and hence the marriage is nulll and void. It is his case that he divorced lady on the next day of marriage realising the fact that she is pregnant by about six months.

2. On the other hand it is the case of the respondent/petitioner in the M.C.that they were in love before marriage and that the marriage was solemnised on 4-7-1995 and at the time of marriage she was six months pregnant. On 15-10-1995 she gave birth to a child and that on 27-12-1995 the petitioner herein divorced the

respondent.

3. The evidence adduced in the matter consisted of the testimony of Pw1 and Ext.P1 and RW1, the petitioner and the respondent respectively. The contention of the petitioner herein was discarded by both the courts below mainly on the basis of the D.N.A. test report which contained the finding that the petitioner is the biological father of the child. DNA test was conducted at the instance of the petitioner herein. Ext.P1 letter of the Secretary of the Mosque showed that the divorce is dated 27-12-1995. Of course, as contended by counsel for the petitioner herein, the Secretary of the Mosque was not examined . All the same, in view of the fact admitted that the DNA test result indicated that the petitioner is the biological father, the contention of the petitioner that he was not acquainted with the lady before the marriage and that on the next day of the marriage on realising that the lady is pregnant, he divorced her cannot be upheld.

It is admitted that the petitioner herein is employed as a watchman in a school, but it is noted that he has not produced any document to prove his monthly earnings. It was in the above circumstances the courts below considered his monthly income as

around Rs.3,000/- per month and found that he will be liable to pay Rs.3000/- for maintenance during the iddat period and Rs.60,000/- towards fair and reasonable provision. I find that the above findings do not call for interference as the amount appears to be quite reasonable. The revision petition is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.M.C.NO.7605 OF 2002

ORDER

12-11-2007